



# Attorney General

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Robert R. Corbin

July 13, 1989

The Honorable Pete Corpstein  
Arizona State Senator  
State Capitol - Senate Wing  
Phoenix, AZ 85007

Re: I 89-067 (R87-059)

Dear Senator Corpstein:

You have informed us that there is county land subject to a deed restriction which limits the use of such land to parks and recreation and have asked whether legislation would be necessary to condemn the land for freeway use. We conclude the answer is no.<sup>1/</sup>

You also have asked whether a conflict of interest arises if a person serving on a citizens' advisory committee formed to make recommendations to a city concerning freeway alignments also owns property in the vicinity of the potential freeway routes. We conclude that Arizona's conflict of interest statutes are applicable to members of a city's citizens' advisory committee. We also conclude that if a member has a substantial interest in a decision of the committee, he must disclose the interest and refrain from participating in any decision to which the interest pertains.

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1. We assume that the deed restriction was not imposed pursuant to state or federal law and that the land was not patented to the State exclusively for recreational purposes pursuant to 43 USC §§ 869 to 869-4.

The Arizona Department of Transportation (ADOT) may acquire by condemnation real property either in fee or a lesser estate "necessary for transportation purposes." A.R.S. § 28-1865(A); see also A.R.S. § 12-1111(6) (eminent domain power vested in state for roads, streets, alleys and other public purposes). ADOT's power to condemn property, however, is subject to Arizona's constitutional mandate that just compensation be made to the property owner. Ariz. Const. art. II, § 17, art. XIV, § 9.

The right to exercise the power of eminent domain is not foreclosed by a deed restriction<sup>2/</sup> attaching to the property condemned. Schara v. Anaconda Co., 610 P.2d 132, 136 (Mont. 1980), cert. denied, 449 U.S. 920 (1981) (quoting Nichols',<sup>3/</sup> "Such restrictions do not, however, have an inhibiting influence upon the right to exercise the power of eminent domain."); City of River Oaks v. Moore, 272 S.W.2d 389, 391-392 (Tex. App. 1954) (deed restrictions do not militate against the power or authority of a city to take property for public use and are not binding on the state or its subdivisions); London v. Handicapped Facilities Board, 637 S.W.2d 212 (Mo. App. 1982) (deed restrictions are subordinate to the right of eminent domain and can be extinguished by condemnation proceedings). We conclude that a deed restriction limiting land use to park and recreational uses does not preclude the state from condemning the property for highway purposes.<sup>4/</sup> Consequently, legislation is unnecessary.

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2. A deed restriction arises out of a contract between the grantor of property and the grantee, and is enforceable against a grantee who attempts to disregard them. Lacer v. Navajo County, 141 Ariz. 392, 394, 687 P.2d 400, 402 (App. 1984).

3. 1 J. Sackman, Nichols' The Law of Eminent Domain, § 5.15 (rev. 3rd ed. 1985).

4. Provided, however, that "[i]f the property is already appropriated to some public use, the public use to which it is to be applied is a more necessary public use." A.R.S. § 12-1112(3).

Your second question addresses Arizona's conflict of interest statutes. A.R.S. §§ 38-501 to -511. The pertinent sections of these statutes require any "public officer" or "employee" of a public agency who has a substantial interest in any contract or decision to be rendered by the agency to disclose such interest and to refrain from participating in the contract or decision. A.R.S. § 38-503. "The object of the conflict of interest statutes is to remove or limit the possibility of personal influence which might bear upon an official's decision." Yetman v. Naumann, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

You ask whether a conflict of interest arises when a person serving on a citizens' advisory committee formed to make recommendations to a city concerning freeway alignment also owns property in the area of potential freeway routes. The answer depends, as a threshold matter, on whether the committee members are public officers or employees. The term "public officer" is defined by statute:

"Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute, but excluding members of the legislature.

A.R.S. § 38-502(8). This definition indicates that if the citizens' advisory committee itself is a "public agency," its members are public officers. "Public agency" is defined in part as:

Any department, agency, board, commission, institution, instrumentality, legislative or administrative body of the state, county, incorporated town or city and any other political subdivision.

A.R.S. § 38-502(6)(b). The citizens' advisory committee that you described is an instrumentality of a city and, therefore is, a "public agency." The members of such public agency are appointed by the city and are therefore public officers pursuant to A.R.S. § 38-502(8). The advisory nature of the committee's role in city government does not remove the members from the definition of "public officer." Ariz. Att'y Gen. Ops. I82-105, R75-235, and R75-211.

Honorable Pete Corpstein  
I89-067  
Page 4

A conflict of interest only arises where the public officer's interest in a decision or contract is "substantial." A.R.S. § 38-503. A substantial interest is defined by statute, A.R.S. § 38-502(11), as "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(10) specifically enumerates ten remote interests. Any interest which does not fall into one of the categories of remote interests, therefore, is a substantial interest. Yetman v. Naumann, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

Whether owning property in the area of the various freeway routes is a substantial interest is a fact-specific question. The determination of whether a conflict exists must be made on a case-by-case basis. Ariz. Att'y Gen. Op. I82-105. Yet, even if a substantial interest exists, the individual affected is not precluded from membership on the citizens' advisory committee. Such person, however, must disclose such substantial interest and refrain from participating in any decision that pertains to such interest. A.R.S. § 38-503.

Sincerely,



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Attorney General

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